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Oct. 2. 1877.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 604.

CHESTER A. ARTHUR, COLLECTOR OF THE PORT OF NEW YORK, PLAINTIFF IN ERROR,

vs.

JOHN M. DAVIES AND ROBERT K. DAVIES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED NOVEMBER 7, 1876.

SUPREME COURT OF THE UNITED STATES.

No. 604.

CHESTER A. ARTHUR, COLLECTOR OF THE PORT OF NEW YORK, PLAINTIFF IN ERROR,

vs.

JOHN M. DAVIES AND ROBERT K. DAVIES.

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1 SOUTHERN DISTRICT OF NEW YORK,
City and County of New York, ss:

John Lenehan, being duly sworn, says that, on the 16 day of October, 1876, he served the within writ of error on Hartley & Coleman, esq's, defendants' attorneys, by leaving a copy thereof with the person in charge of the law-office of said defendants' attorneys, No. 51 William street, in said city.

JOHN LENEHAN.

Sworn to before me this 16 day of Oct., 1876.

J. W. FITCH,
Notary Public.

2 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the circuit court of the United States for the southern district of New York, greeting:

Because in the records and proceedings and also in the rendition of the judgment of a plea which is in the said circuit court before you, between John M. Davies and Robert K. Davies and Chester A. Arthur, defendant, a manifest error hath happened, to the great damage of the said Chester A. Arthur, defendant, as by his complaint appears; we, being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the third Monday of October term, eighteen hundred and seventy-six, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done thereon to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the eleventh day of October, in the year of our Lord one thousand eight hundred and seventy-six.

[SEAL.] JOHN I. DAVENPORT,
Clerk.

The foregoing writ is hereby allowed.

ALEX. S. JOHNSON,
Cir. J.

3 (Indorsed:) U. S. Supreme Court. Chester A. Arthur, plaintiffs in error, against John M. Davies & al., defendant' in error. Writ of error. Filed Oct. 17, 1876.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, John I. Davenport, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, by virtue of the foregoing writ of error, and in obedience thereto, do hereby certify that the following pages, numbered from one to twenty-nine, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of John M. Davies and Robert K. Davies, defendants in error, against Chester A. Arthur, plaintiff in error, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this first day of November, in the year of our Lord one thousand eight hundred and seventy-six, and of the Independence of the said United States the one hundred and first.

[SEAL.] JOHN I. DAVENPORT.
Clerk.

4 U. S. circuit court for the southern district of New York, in the second circuit.

Pleas before the judges of the circuit court of the United States of America for the southern district of New York, in the second circuit, at the United States court buildings in the city of New York, of the April term, 1876, to wit, of the 6th day of October, in the year of our Lord one thousand eight hundred and seventy-six.

Witness the honorable Alexander S. Johnson, one of the judges of the said circuit court.

JOHN I. DAVENPORT,
Clerk.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Be it remembered that, heretofore, to wit, on the 26th day of February, 1874, in the October term of 1873, before the judges of the circuit court of the United States of America for the southern district of New York, in the second circuit, at the United States court buildings in the city of New York, came John M. Davies and Robert K. Davies, by Chase, Hartley & Coleman, their attorney', and brought into the said court, before the aforesaid judges thereof, then there, their certain declaration against Chester A. Arthur, for defendant, being in custody, &c., of a plea of trespass on the case upon promises; which said declaration follows in these words, that is to say:

5 THE UNITED STATES OF AMERICA:

Circuit court of the United States for the southern district of New York in the second circuit, as yet of the October term, in the year one thousand eight hundred and seventy-three. Febr. 26th, 1874.

JOHN M. DAVIES & ROBERT K. DAVIES }
vs.
CHESTER A. ARTHUR. }

John M. Davies & Robert K. Davies, plaintiffs in this suit, come into court, and, by Chase, Hartley & Coleman, their attorneys, give the court now here to be informed that, heretofore, to wit, on the twenty-fourth day of October last past, this action was commenced in the supreme court of the city and county of New York, according to the laws of the State of New York and the rules and practice of said court, in favor of the said plaintiffs, against the defendant herein, upon the causes of action hereinafter set forth, and the summons therein filed with the clerk of said court.

That the defendant afterwards, by his attorney, George Bliss, esquire, duly appeared in said action, and thereupon, on the seventh day of February, in the year one thousand eight hundred and seventy-
6 four, the said action was duly removed, by writ of certiorari, for further prosecution, into this court, according to the act of Congress in such case made and provided; and the clerk of the said

supreme court did thereupon return the said writ with the said summons and duly file the same in this court, with allegations the defendant admits to be true.

Wherefore, let the further proceedings and trial in this action be continued in this court, and the said plaintiffs, who are partners under the firm-name of John M. Davies & Company, and as such firm, by their said attorneys, complain of said defendant of a plea of trespass on the case for promises, for that whereas said defendant, on the 24th day of October, eighteen hundred and seventy-three, at New York City, in the district aforesaid, was indebted to said plaintiffs in the sum of one thousand and $\frac{}{100}$ dollars, lawful money of the United States of America, for duties on merchandise, to wit, suspenders and braces, imported into and entered at the collection district of the United States for the
7 city of New York on divers days in July, August, September, and October, in the year one thousand eight hundred and seventy-three, in the following vessels, to wit: Russia, Java, Algeria, Abyssinia, Scotia, & Cuba, from Liverpool, London, Paris, & Havre, unlawfully demanded, exacted, and received at said New York City by the said defendant, then collector of the customs for said district, under color of a law of the United States for the collection of duties on imports, and paid by the said plaintiffs under protest and appeal in writing in due form of law.

And being so indebted he, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, at the place aforesaid, undertook and then and there faithfully promised the said plaintiffs well and truly to pay unto the said plaintiffs the said sum of money when he, said defendant, should be thereunto afterwards requested.

And whereas, also, the said defendant afterwards, to wit, on the same day and year last aforesaid, at the place aforesaid, was indebted
8 to the said plaintiffs in the further sum of one thousand dollars, lawful money of the United States of America, for money before that time lent and advanced by said plaintiff to said defendant and at the special instance and request of the said defendant, and for other money by the said plaintiffs before that time paid, laid out, and expended for the said defendant, and at the like request of the said defendant, and for other money by the said defendant before that time had and received to and for the use of said plaintiffs.

And being so indebted, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, and at the place aforesaid, undertook and then and there faithfully promised the said plaintiffs well and truly to pay unto the said plaintiffs the said sum of money in this court mentioned when he should be thereunto afterwards requested.

Nevertheless, said defendant (although often afterwards requested so to do) has not paid said sum of money, or any or either of them, or any part thereof, to the said plaintiffs, but to pay the same or any part thereof to the said plaintiffs has hitherto refused, and still does
9 refuse, to the damage of the said plaintiffs of two thousand dollars; and therefore the said plaintiffs bring suit, &c.

CHASE, HARTLEY & COLEMAN,
Attorneys for the Plaintiffs.

(Endorsed:) 2677. U. S. circuit court. J. M. Davies et al. vs. Chester A. Arthur. Declaration. Chase, Hartley & Coleman, 51 William street, attorneys for plaintiff'. To George Bliss, esq., def't's att'y. Filed February 26th, 1874.

Plea.

United States circuit court, southern district of New York.

CHESTER A. ARTHUR
ads.
JOHN M. DAVIES & AL.

And the said defendant, Chester A. Arthur, by George Bliss, his attorney, comes and defends the wrong and injury when, &c., and says that he did not undertake and promise in manner and form as the said plaintiffs in this suit have above thereof declared against the said defendant, and of this he puts himself upon the country, and the said plaintiff' do the like, &c.

GEORGE BLISS,
Defendant's Attorney.

To CHASE, HARTLEY & COLEMAN, Esq.,
Plaintiffs' Attorney.

10 (Indorsed:) U. S. circuit court. Chester A. Arthur ads. J. M. Davies & al. Plea. George Bliss, attorney for defendant.

Due service of a copy of the within is hereby admitted.
New York, March 4, 1874.

CHASE, HARTLEY & COLEMAN.

You will please take notice that the plea of the defendant in the above cause, of which the within is a copy, was this day filed in the office of the clerk of the U. S. circuit court for the southern district of New York.

New York, March 4, 1874.

Yours, &.,

GEORGE BLISS,
Defendant's Attorney.

To CHASE, HARTLEY & COLEMAN, Esq.,
Plaintiffs' Attorney.

11 Therefore the issue above joined is ordered to be tried at a circuit court appointed to be held at the United States court-rooms n the post-office building, on the 3rd day of *Monday of* October, A. D. 1875.

And now, to wit, on the 14th day of January, A. D. 1876, b'ing as yet of said October term, before honorable Nathaniel Shipman, sitting as circuit judge, came the said parties, by their attorneys, and the said judge before whom said issues were tried hath sent here his record had before him in these words, to wit.

Afterwards, to wit, on the same day and place, before Nathaniel Shipman, judge of said circuit court, came the plaintiffs and defendant, by their attorney, and the jurors of the jury also came, who, to speak the truth in the matter within contained being duly chosen, tried, and sworn, upon their oath say that said defendant did undertake and promise in matter and form as said plaintiffs have above declared against him, and they assess the damages of said plaintiff' at eighty dollars, gold coin of the United States, over and above their costs
12 and charges in this suit expended, and for their costs and charges the sum of .

13 Therefore, it is considered that the said plaintiffs do recover against the said defendant their said debt, and also for their damages which they have sustained, as well on occasion of the detaining of the said debt as for their costs and charges by them about their suit in this behalf expended, by the said court now here adjudged to the said plaintiffs, and with their assent; which said debt, damages, costs, and charges in the whole amount to .

And the said defendant in mercy, &c.

Judgment signed this day of , 187 .

Clerk.

(Indorsed:) U. S. circuit court. John M. Davies et al. vs. Chester A. Arthur. Judgment-record. Geo. Bliss, U. S. attorney. Filed Oct. 7, 1876.

14 *Bill of exceptions.*

U. S. circuit court, southern district of New York.

JOHN M. DAVIES
against
CHESTER A. ARTHUR, COLLECTOR.

Afterwards, to wit, on January 14th, 1876, the issues joined in this cause came on to be tried, at a stated term of said court, held as and for the October term, 1875, before Hon. Nathaniel Shipman, district judge, sitting as circuit judge, and a jury duly empanelled and sworn, and said trial continued from day to day until January 21, 1876, when a verdict was directed as hereinafter stated; and in the course of said trial counsel for the defendant did take and allege sundry exceptions, as hereinafter set forth.

The plaintiffs, to maintain the issues on their part, introduced
15 evidence showing that at or about the times mentioned in the bill of particulars they imported into the port of New York certain merchandize hereinafter described, upon which the defendant, as collector of the said port, had exacted and collected duties as hereinafter stated, and that plaintiffs had paid the same and made due protest as contemplated by law, and thereafter duly appealed from the decision of the collector ascertaining and liquidating the rate and amount of said duties to the Secretary of the Treasury, who approved the decision of the collector, and that within appropriate time thereafter this action was brought.

The ground of objection stated in the protest was that the goods, being suspenders or braces, in part of India rubber, were liable to duty at 35 per cent. only under section 22 of act of March 3, 1861, and sec. 13 of act of July 14, 1862. The further claim, that they were liable to ten per cent. reduction of duty under section 2, act of June 6, 1872, was
16 admitted by the collector, and on the trial was allowed.

It appeared from evidence introduced by the plaintiffs that they had imported into the port of New York four kinds or classes of goods, all commercially known as suspenders or braces, which terms are synonymous, made as follows:

1. Suspenders or braces manufactured wholly of worsted, which were knit goods.

2. Suspenders or braces manufactured of worsted, cotton, and rubber.

3. Suspenders or braces manufactured of rubber, cotton, and silk, cotton being of chief value.

4. Suspenders or braces manufactured of rubber, cotton, and silk, cotton being of chief value, and the silk being a few threads only, introduced merely for purposes of ornamentation.

Upon all these goods the defendant, as collector of customs for the port of New York, exacted duty from the plaintiff as follows,
17 viz: On classes 1 and 2, 35 per cent. and 50 cents per pound less ten per cent.; and on classes 3 and 4, fifty per cent. less 10 per cent.

The above description of the goods referred to as classes 1, 2, and 3 was agreed to by the counsel for the respective parties as a correct description of the goods referred to in said classes, but in respect to class 4 there was testimony tending to describe the goods in that class by a single witness, who was called by the plaintiffs, and who testified in regard to that class as follows:

I am clerk for John M. Davies & Co., the plaintiffs. These suspenders (4th class) were made of cotton and rubber, with silk for color. (Samples of some thereof were here exhibited by the witness; also samples of the webbing from which they were made.) We usually keep clippings of the webs, which answer as samples for all trade purposes.
18 The articles we imported were made up. "Braces" and "suspenders" are synonymous terms. "Braces" is the term generally applied to those of English manufacture, "suspenders" to those of French manufacture; "suspenders" is the general term. These samples of webs are sent us in advance by the manufacturers abroad, and by them we order our goods. These samples indicate the material and colors, and bear certain numbers, and we order by the numbers. I have seen these webs made in this country, and they are usually made in the same way. The materials in these goods show for themselves, and the trade can readily distinguish the material, and, indeed, it is obvious. The only way to tell accurately what is the value of the cotton-yarn and the silk and rubber of which these (4th class) are made is by knowing what quantity of such material and its cost the manufacturer puts in them. I cannot state what quantity of each material there is in a yard or any other given quantity. In these webs the silk is used for color-
19 ing, and the quantity of it is very small. These webs are sold by the gross yards.

Q. (By plaintiffs' counsel.) State the quantity of silk in a given sample relatively to the cotton.

(Objected to as immaterial, and any testimony as to the comparative value of the materials objected to as incompetent, irrelevant, and immaterial, the defendant insisting that the presence of the material, silk, cotton, and rubber, was sufficient, and that the comparative amount of each was immaterial.

Objection overruled, and defendant's counsel duly excepts.)

The court then asked:

Q. State the comparative quantity of silk and cotton threads in that sample (one of the goods in question).

(Same objection and ruling, and defendant's counsel duly excepted thereto.)

A. I should judge that in this, which is a fair specimen of a portion of the sample in 4th class, the quantity of silk to the other mate-
20 rials is about 15 to 20%. In another sample here of the same kind of goods I should judge the quantities of silk as compared to other material not five per cent. The silk here appears only on the

surface. These webs, most of them, are what is called four to six ply—generally six ply, that is, there are six separate bands of iron that enters into the loom. The rubber is generally between the third and fourth. The silk used here is only on the top band, which, in one of these looms, is only one-sixth of the thickness where the fabric is five thread thick or five ply. There is only one ply of silk, the rest all cotton. Some of these goods are edged with silk.

At the close of the testimony, the said witness being the only one introduced, the defendant introduced no testimony, and the testimony having been closed, defendant's counsel moved that the court direct the jury to find a verdict for the defendant, and to decide as matter of law that the plaintiff had not established a case of illegal exaction
21 of duty, and had adduced no evidence to entitle them to a verdict.

This motion the court denied, and defendant's counsel thereupon duly excepted.

The defendant offered no testimony, and then requested the court to submit all the evidence in the case to the jury, and prayed the court to instruct the jury as follows:

1. If the goods that were assessed at ninety per cent. of fifty per cent. ad valorem were "suspenders," or "braces," manufactured of cotton, rubber, and silk, then they were dutiable as assessed.

The court declined so to charge, and defendant's counsel duly excepted.

2. If such goods contained in their component material any merchantable quality of silk, the amount of such silk, or the relative value thereof as a component material, is unimportant.

The court declined so to charge, and defendant's counsel excepted.

22 3. There being as to such goods (meaning classes 3 & 4) no conflict of testimony upon the point that they are manufactures of cotton, silk, and rubber, it is the duty of the jury to find a verdict for the defendant, because any other verdict would be contrary to evidence.

The court declined so to charge, and defendant's counsel duly excepted.

Defendant's counsel further requested the court to intruct the jury that the proper rate of duty was collected upon the goods mentioned as class 3, which request the court also refused, and defendant's counsel duly excepted. A similar request, ruling, and exception was made as to the goods mentioned in class 4.

There being in the opinion of the court no material disputed question of fact in the case, the court decided that there was nothing to be submitted to the jury, and held that upon the goods mentioned as
23 class 1 and class 2 the duty was properly assessed, and that no part of the duty paid upon those goods could be recovered, and the jury were instructed accordingly; and further held that upon the merchandise referred to above as class 3 and class 4 the duty was erroneously assessed, and should have been assessed at ninety per cent. of thirty-five per cent. ad valorem, and that upon these goods the plaintiff was entitled to a recovery, and instructed the jury to find for the plaintiffs the excess of duty exacted upon said classes, which had been agreed to by the respective counsel as the correct amount, in case the plaintiff was entitled to a recovery, the amount of $53.15 upon the 3d class and the amount of $19.20 upon the 4th class, and interest; to which direction the defendant's counsel then and there duly excepted.

The jury found a verdict for the plaintiff accordingly for the sum of $72.35, principal, in gold, and interest, in currency.

24 And inasmuch as the aforesaid several matters of fact and of law and the said several exceptions do not appear by the record of said trial, the foregoing, on the prayer of defendant's counsel, has been signed by the judge presiding thereat, as and for the bill of exceptions in this cause, at the court-rooms, New York City, on the day of February, at the October term of said court, as aforesaid.

[L. S.] N. SHIPMAN, *Judge.*

25 (Indorsed:) U. S. circuit court, southern district of New York. John M. Davies versus Chester A. Arthur. Copy bill of exceptions. George Bliss, United States attorney for the southern district of New York. Filed September 28, 1876.

26 Supreme Court of the United States, of October term, in the year of our Lord one thousand eight hundred and seventy-six.

CHESTER A. ARTHUR, PLAINTIFF IN ERROR, *ag'st* JOHN M. DAVIES & ROB'T K. DAVIES, DEFENDANTS IN ERROR.

Afterwards, to wit, on the third Monday in said term, before the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, comes the said Chester A. Arthur, by Geo. Bliss, his attorney, and says that in the record and proceedings aforesaid there is manifest error in this, to wit, that by the record aforesaid there is error in the several rulings of the court, to which exception has been taken, and that by the record aforesaid it appears that judgment aforesaid, in form aforesaid given, was given for the said defendants against the said plaintiff, whereas by law of the land the said judgment
27 ought to have been given for the said plaintiff in error against the said defendants in error; and the said plaintiff prays that the judgment aforesaid, for the errors aforesaid, and other errors in the record and proceedings aforesaid, as the same appear more fully therein, may be reversed, annulled, and altogether held for nothing, and that he, the plaintiff, may be restored to those things which he has lost by reason of said judgment.

GEO. BLISS,
U. S. Att'y, for Pl'tiff in Error.

(Endorsement:) U. S. Supreme Court, southern district of New York. Chester A. Arthur, pl't'ff in error, versus John M. Davies & al., def'ts in error. Assignment of error. George Bliss, United States attorney for the southern district of New York. Filed Nov. 1, 1876.

28 SOUTHERN DISTRICT OF NEW YORK,
City and County of New York, ss:

John Lenehan being duly sworn, says that on the 16 day of October, 1876, he served the within citation on Hartley & Coleman, esq's, defendants' attorneys, by leaving a copy thereof with the person in charge of the law-office of said Hartley & Coleman, attorneys, No. 51 William street, in said city.

JOHN LENEHAN.

Sworn to before me this 16 day of Oct., 1876.

J. W. FITCH,
Notary Public.

UNITED STATES OF AMERICA, *ss :*

To John M. Davies and Robert K. Davies, greeting :

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the third Monday of October term, eighteen hundred and seventy-six, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the southern district of New York, wherein Chester A. Arthur is plaintiff and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court of the United States, this eleventh day of October, in the year of our Lord one thousand eight hundred and seventy-six.

ALEX. S. JOHNSON,
Cir. J.

(Indorsed :) U. S. Supreme Court. Chester A. Arthur, plaintiff in error, against John M. Davis et al., defendant' in error. Citation. Filed Oct. 17, 1876.

(Indorsement on cover :) No. 604. Chester A. Arthur, collector of the port of New York, plaintiff in error, vs. John M. Davies & Robert K. Davies. S. New York, C. C. U. S. Filed 7th November, 1876.

REC. 604—2

In the Supreme Court of the United States.

OCTOBER TERM, 1877.

CHESTER A. ARTHUR, COLLECTOR,
PLAINTIFF IN ERROR,
vs.
JOHN M. DAVIES, DEFENDANT IN ERROR.
} No. 604.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

Brief for the Plaintiff in Error.

In the Supreme Court of the United States.

OCTOBER TERM, 1877.

CHESTER A. ARTHUR, COLLECTOR, plaintiff in error,
vs.
JOHN M. DAVIES, DEFENDANT IN error.
No. 604.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF FOR THE PLAINTIFF IN ERROR.

The action in this case was brought to recover an excessive amount of duties alleged to have been exacted upon an importation of certain *suspenders* made in part of India rubber, and it presents the question whether such articles, when composed in part also of a merchantable quantity of *silk* (folio 21), are dutiable at 45 or at 31½ per centum ad valorem.

Two classes of the articles in question are involved. As to the *first*, it was allowed that cotton was the material of chief value therein; as to the other, this point was not admitted by the government; the only witness examined thereupon saying that "the only way to tell accurately what is the value of the cotton yarn and the silk and rubber of which these are made is by knowing what quantity of such material, and its cost, the manu-

facturer puts in them;" adding, "I cannot state what quantity of each material there is in a yard or any other given quantity." At another point he said (the government objecting and excepting to the evidence as incompetent and irrelevant) that in a sample shown to him, *which he judged to be a fair specimen*, the quantity of silk was about 15 to 20 per cent.; and in another sample not 5 per cent. He also testified that the web was from four to six (generally six) ply, silk being only one of these, and the rest cotton, while India rubber was introduced between the third and fourth. (Folios, 18, 19, and 20.)

The Government claimed that for tariff purposes it made no difference what was the proportion between the different materials in the suspenders. (Folios 19 and 20.)

The court held that there was no important disputed question of fact in the case, and instructed the jury that the importer was entitled to recover the excess that had been exacted beyond 31½ per cent. ad valorem. (Folios 23 and 24.)

It is submitted that there is error upon the record in the following rulings:

1. That the articles were dutiable at 31½ and not at 50 per cent. ad valorem.

2. That evidence was admitted as to the comparative quantity of the several materials composing the suspenders.

3. That the jury were directed to find for the plaintiffs below, and—

4. That judgment was given for the plaintiffs, and not for the defendants below.

The statutory provision relied upon by the Government as controlling this case first appeared in the act of 1862, ch. 163 (12 Stats., 552); that relied upon by the importer first appeared in the act of 1861, ch. 68 (12 Stats., 191), and was repe d, with an increase of the duty, in that of 1862, ch. 163 (12 Stats., 556).

The former was worded as follows:

"India rubber and silk, manufactures of, or manufactures of India rubber and silk and other materials, fifty per centum ad valorem. (See Rev. Stats., sec. 2504, p. 480.)

The language of the latter is—

"Braces, suspenders, webbing, or other fabrics, composed wholly or in part of India rubber, not otherwise provided for, *thirty-five* per centum ad valorem." (See Rev. Stats., sec. 2504, p. 480.)

As will be recollected, the act of 1872, ch. 315 (17 Stats., 231), reduced the above duties to *ninety per cent.* of the rates above stated. (See Rev. Stats., sec. 2503.)

By comparing the dates of the above provisions, it will be seen that the statute which imposed, in so many words, a duty upon such *manufactures of rubber as also include silk*, was *supplemental* to that which originally imposed a duty upon *braces, &c., composed wholly or in part of India rubber.*

The latter provision, having in it the expression *not otherwise provided for*, is *residuary* in its character. Congress, however, thought proper in 1862 to except from its operation those manufactures of rubber which include *silk*. The extent of the *residuary* enactment can be best ascertained by first ascertaining that of those which precede it in point of operation, as is familiar in

the case of ordinary and *residuary* legacies. It seems plain that the former of the above provisions, did it stand alone, would include the *suspenders* in question. If so, I submit that the residuary provision does not extend to them, but is limited to such rubber suspenders, &c., as are not composed also of silk.

The circumstance that here the language of the residuary clause is more specific than the other in the point of *naming* the articles now in question, viz, braces, suspenders, &c., does not, as it seems, prevent the operation of the general rule, that the compass of a residuary clause cannot be ascertained without a *previous* definition of the clauses to which it is related as residuary.

The suggestion that the word *silk* is the key to the doubt presented by the clauses quoted above is confirmed by the latter clause of the *similitude provision* of the act of 1842, ch. 270, sec. 20 (see Rev. Stats., sec. 2499), viz: *that articles manufactured from two or more materials shall be assessed at the highest rate chargeable to any of its components;* for by referring to the duties upon *silk* (see Rev. Stats., p. 472) it will be seen that all duties upon that material, except in the incipient stages of manufacture, are either 50 or 60 per centum ad valorem.

As regards the question of *evidence* as to the comparative value of the *silk*, it seems that the court must have concluded that it was immaterial, and have founded its instructions upon that conclusion, otherwise a question of fact was presented upon which the government had a right to consult the jury. For otherwise the direction to the jury *to find for the plaintiff* (folio 23) was erroneous. Unless the record shows that the court subsequently

administered the case upon the hypothesis of the immateriality of the evidence excepted to, it seems plain that its admission was *error*, inasmuch as the provisions of the acts of 1864, 1865, and 1870, (see Rev. Stats., p. 472, Schedule H, three last clauses,) have no application to the statutory provisions above quoted.

S. F. PHILLIPS,
Solicitor-General.

P. F. McBreen, Law and Job Printer, 14 & 16 Ann St., N. Y.

U. S. Supreme Court.

CHESTER A. ARTHUR,
Plaintiff in Error,
vs.
JOHN M. DAVIES *et al.*

October Term, 1877.
No. 604.

Motion to Dismiss.

We move to dismiss for want of jurisdiction, because there is no evidence in the record of a final judgment in the Court below.

Rev. Stats., section 691.

The paper purporting to be a judgment record, is signed by neither judge or clerk, and the certificate of the clerk, (Appendix A of this brief), shows that the omission was not inadvertent. Record, page 5, folio 13.

Brief of Defendant in Error on the Merits.

STATEMENT.

The statement of the case by plaintiff in error, is not accepted.

"*It appeared from evidence* introduced by the plaintiffs "that they had imported into the port of New York four "kinds or classes of goods, all *commercially known* as "'*suspenders*' *or* '*braces*,' which terms are synonymous, "*made as follows*, (classes 1 and 2 omitted): * *

"3. Suspenders or braces manufactured of rubber, cotton "and silk, cotton being of chief value.

"4. Suspenders or braces manufactured of rubber, cotton "and silk, cotton being of chief value, and the silk being "a few threads only introduced merely for purposes of "ornamentation.

"The above description of the goods referred to as class "3 and 4, was agreed to by the counsel for the respective "parties as a correct description of the goods."

Record, pp. 5 and 6.

As to class 4, there was further testimony by a witness that the goods were "braces and suspenders, made of cotton and rubber with silk for color." "The materials in these goods show for themselves, and the trade can readily distinguish the material, and indeed it is obvious." "In these webs the silk is used for color, and the quantity of it is very small."

The Court asked, for its own information, "State the comparative quantity of silk and cotton threads in that sample (*one of the goods in question.*) Answer: 15 per cent. to 20 per cent., and in another not 5 per cent."

No testimony was introduced by defendant.

Counsel for plaintiff in error on page 1 of his brief, states as to the second class of goods (class 4), "this point (viz.: that cotton was the material of chief value therein), was not admitted by the government." Again, at the bottom of page 4, he refers to the same matter, suggesting either that the Court must have concluded that evidence, as to the comparative value of the silk was immaterial, or otherwise

a question of fact was presented upon which the government had a right to consult the jury.

These all result from misapprehension of the facts. Silk was in neither class 3 or 4 the component of chief value—cotton was.

In proof of which the record shows, page 5, folio 16, "The further claim that they were liable to ten per cent. reduction of duty, under section 2, Act June 6th, 1872, was admitted by the collector, and on the trial was allowed."

Classes 3 and 4 are then described.

And defendant, as collector of customs, exacted "on classes 3 and 4, fifty per cent. less 10 per cent."

Record, page 6, folio 17.

At the close of the trial, "defendants counsel further requested the Court to instruct the jury *that the proper rate of duty was collected* upon the goods mentioned as class 3," *and made the same request as to class* 4.

Record, page 7, folio 22.

If *silk* had been the component of chief value, there would have been no reduction of duty, for the reduction is granted by sec. 2, Act June 6th, 1872, upon "manufacturers of which cotton is chief value."

All parties agreed that the ten per cent. reduction applied to either primary rate of duty as is expressly admitted by the Record before cited.

The Court held there was no disputed question of fact and nothing for the jury, that the facts presented a question of law as to which of two rates of duty were applicable.

And he directed a verdict.

Record, page 7.

The Court held in effect that the goods were *commercially known* as braces and suspenders, and that being in *part of rubber*, they were expressly provided for at 35 per cent. under the acts of 1861 and 1862, under which designation they had been always classed for duty since 1842.

5 Stats., 555, middle.
9 Stats., 44, near bottom.

Statutes.

Section 22, Act March 2, 1861, (12 Stats., 191) imposes a duty of 30 per cent. on "Braces, suspenders, webbing or other fabrics composed wholly or in part of india rubber, not otherwise provided for."

Section 8, Act July 14, 1862, (12 Stats., 552) imposes "On manufactures of india rubber and silk, or of india rubber silk, and other materials, fifty per centum *ad valorem*."

Section 13, *same Act*, (12 Stats., 556) imposes an *additional* duty of 5 per cent. on "Braces, suspenders, webbing, or other fabrics composed wholly or in part of india rubber, not otherwise provided for."

Braces and suspenders in part of rubber are provided for in the Tariff Acts of 1842 and 1846—in the latter Act *totidem verbis* as in the Acts of 1861 and 1862.

5 Stats., 555, middle. 9 Stats., 44, near bottom.

Argument.

Are—1st. Suspenders of cotton, *rubber* and silk, cotton chief value; and 2d. Suspenders of cotton and rubber, cotton chief value, with "silk for color," or ornament only, dutiable at ninety per cent. of 35 per cent., or at ninety per cent. of 50 per cent., under the Acts above cited?

I.

The cardinal error in the argument of the Attorney-General is in assuming that the clause for "braces and suspenders," is so related to the clause for "manufactures of india rubber silk and other materials," so that it can be considered as either *residuary* or *supplemental* to it.

"Braces and suspenders in part of rubber" have been dutiable *eo nomine* in every tariff from 1842 to date, while "manufactures of india rubber, silk and other materials" first came into the tariff in 1862. The former specific designations had acquired from 1842 to 1862 a tariff meaning which could not be disturbed by the later general words with which they are contrasted in the Act of 1862.

Reiche *v.* Smythe, 13 Wallace, 162.
Homer *v.* The Collector, 1 Wallace, 486.
Movius *v.* Arthur, No. 82 present calendar.

"Where an article is provided for in a Tariff Act by name, no subsequent general provision, even if it were without qualification, would include it."

Roosevelt *v.* Maxwell, 3 Blatch., 391, 395.
Deforest *v.* Lawrence, 13 Howard, 274.
Elliot *v.* Swartout, 10 Peters, 137, 152.
Bacon's Abr., I. 2.

II.

It is very doubtful whether the words "not otherwise provided for" in the Acts of 1861 and 1862 qualify "braces or suspenders," as they do the word "*fabrics*," which they immediately follow, for certainly in the Acts of 1846 and 1861 there was no brace or suspender containing rubber that was "otherwise provided for."

From 1846 to and inclusive of 1861 the words, "not otherwise provided for," were in the suspender clause, but it was not a residuary clause to "manufactures of india rubber and silk," because the latter did not then exist.

Braces and suspenders containing rubber never having been classed for duty, except under their own commercial names; and in the Act of 1862 having been mentioned *eo nomine* in opposition to "manufactures of india rubber and silk," can it be maintained that the latter was supplemental to the former, or that braces and suspenders are residuary to "manufactures of india rubber, silk and other materials."

No such repeal by implication suggested under the theory of a residuary clause is tenable.

McCool *v.* Smith, 1 Black., 470–471.

III.

The suggestion on page 4, of the brief of the Attorney General, that "the word silk is the key" to the doubt he suggests, is apparently to bring in the similitude clause.

The goods being *enumerated* as "braces and suspenders" the similitude law cannot apply, and even if the goods were dutiable as "manufactures of india rubber, silk and

other materials," it would not be under the similitude clause; but because they were expressly named in the statute.

Lottimer *v.* Lawrence, 1 Blatch., 614.

IV.

The counsel also states here "by referring to the duties upon *silk*, (see Rev. Stats., p. 472) it will be seen that all duties upon *that material*, except in the incipient stages of manufacture, are either fifty or sixty per centum, *ad valorem*."

This is denied.

Schedule H is not the only place in the Revised Statutes where goods with silk as a component are provided for at other rates than fifty or sixty per cent., *vide* p. 479; manufactures of silk, if embroidered, thirty-five per cent., p. 480; hatter's plush of silk and cotton, cotton chief value, twenty-five per cent., p. 483; lastings and silk twist for buttons, etc., ten per cent.

There are many classes of goods also mentioned where the rate of duty is controlled by naming a component other than silk, and testimony would show that the remaining component was silk which might even be of chief value, (e. g.) goods in part of wool, the remainder of silk. In Schedule L, again in another class of cases like p. 479, Fans, etc., of whatever description of whatever material composed thirty-five per cent.; where the duty is imposed regardless of the component, and it is well known that Fans are principally silk and satin.

So the statutes do not sustain the counsel in his position as to the rates of fifty and sixty per cent.

V.

The counsel is again in error as to his conclusion under the similitude clause, even if it applied.

The component materials of these goods are threads of cotton, rubber and silk woven in a loom. The silk thread is provided for in Schedule H, as "spun silk for filling in skeins or cops," dutiable at thirty-five per cent., and no more, which is the primary rate of duty claimed.

In addition to the above response to the argument of the Attorney General, it is only necessary to state a few considerations why judgment should be affirmed.

I.

The record shows that the goods are *commercially known* as "braces and suspenders," and that they are "composed in part of rubber." Goods are dutiable under the designation they bear in the trade and commerce of this country.

Tyng *v.* Grinnell, 2 Otto, 470, and cases there cited.

II.

The provisions for "braces and suspenders," in the Act of 1861, were not repealed by Section 8 of the Act of 1862, relative to "manufactures of india rubber, silk and other materials," because they are reiterated in Section 13, Act of 1862, *totidem verbis*, and an additional duty imposed by

which an intention to preserve the suspender clause is manifested.

III.

By specially naming "suspenders in part of rubber," Congress must have intended them to be excepted from "manufactures of india rubber, silk and other materials," found in the same Act.

IV.

The provisions of the Sections in the Acts of 1861 and 1862, in which suspenders are found, show a purpose and design to provide for all *articles* worn on the human body at 35 per cent., such as "articles worn by men, women or children of *whatever* material composed" * * "clothing ready-made and wearing-apparel of whatever material composed, except wool, &c." * "Caps, gloves, leggins, mits, socks, &c., and all similar articles made on frames."

V.

If these suspenders be considered as substantially cotton suspenders (that material being of chief value) the duty on them would be as claimed, 35 per cent.

To avoid citation of numerous Acts we refer to Schedule A, Revised Statutes, p. 464, where all the made-up articles of cotton and its general manufactures, except piece goods, are dutiable at 35 per cent.

VI.

The term "silk suspenders," found in Section 8, Act of June 30, 1864, (13 Stats., 210,) clearly covers all silk suspenders, even if in part of rubber, and even if a "manufacture of india rubber, silk and other materials," because they are commercially known as "silk suspenders."

Why then are not the suspenders in suit—cotton suspenders in part of rubber—dutiable at 35 per cent. under the equally specific enumeration of "suspenders in part of rubber?"

VII.

The enumeration of "silk suspenders" in connection with the clauses in dispute, is indicative of the intention of Congress to class all suspenders under their proper *commercial* names.

EDWARD HARTLEY,

Counsel for Deft's in Error.

Appendix A.

CIRCUIT COURT OF THE UNITED STATES,

SOUTHERN DISTRICT OF NEW YORK.

JOHN M. DAVIES *et al.*,

vs.

CHESTER A. ARTHUR.

2677.

I, John I. Davenport, Clerk of the Circuit Court of the United States for the Southern District of New York, do hereby certify that the records of my office show, that on the 14th day of January, A.D. 1876, the plaintiff, in the above-entitled action recovered of the above-named defendant, a verdict for the sum of eighty dollars in gold.

I further certify that on the 7th day of October, A.D. 1876, the attorney for the defendant presented to me what purported to be a judgment-roll in said action, with a request that I sign the same and enter judgment thereupon, which request was then and there refused.

The said paper purporting to be such judgment-roll was then and there by said attorney for defendant, filed in my office.

I further certify that on the 11th day of October, A.D. 1876, a writ of error was sued out by the defendant; on the 17th day of October, the said writ of error and citation was filed in my office.

I further certify that in obedience to said writ of error, I did on the 6th day of November, A.D. 1876, transmit my return on said writ to the Supreme Court of the United States.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of said Circuit Court, this 15th day of March, A.D. 1878.

[SEAL.]

JOHN I. DAVENPORT,
Clerk.

Suspendu sich Stube